

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

D. PATRICK SMITHERMAN §  
Plaintiff, §  
v. § CIVIL ACTION NO. 4:16-cv-00798  
BAYVIEW LOAN SERVICING, LLC, et al. §  
Defendants. §

AGREED MOTION TO VACATE JUDGMENT AND REMAND

Plaintiff D. PATRICK SMITHERMAN and Defendants, BAYVIEW LOAN SERVICING, LLC and BAYVIEW LOAN SERVICING and file this Agreed Motion to Vacate Judgment and Remand and respectfully shows the court as follows:

I. Diversity

The Fifth Circuit remanded this matter back to this Court for the limited purpose of determining the citizenship of Bayview Loan Servicing, LLC. (“BLS”).

BLS concedes that diversity jurisdiction does not exist in this case. BLS is wholly owned by Baview Asset Management, LLC who in turn is owned in part by The Blackstone Group, L.P. Blackstone is a nationwide and worldwide private equity, alternative asset management and financial services entity. Any person who is a shareholder of Blackstone directly, or who own shares through an investment fund is considered and treated as an individual partner. For diversity purposes of a partnership, the domicile of each individual partner must be considered. After review, BLS concedes that due to the sheer number of shareholders of Blackstone (of which there over 1 billion shares outstanding) there are shareholders who are domiciled in the State of Texas, which destroys diversity in this matter.

Accordingly, the Parties agree that:

1. The Amended Final Judgment [Doc. 12] should be vacated.
2. This case should be remanded to the 269<sup>th</sup> District Court of Harris County.
3. Plaintiff shall be reimbursed the appellate filing fees incurred by Plaintiff appealing the judgment of this Court.

Further, there was an order to disburse funds held in the Court's registry [Doc. 23]. A check was issued by the court, but same was never negotiated or deposited by BLS due to subsequent objections filed by Plaintiff. The funds remain with the court to this date. The parties agree that upon remand the funds should be returned to the Registry of the Harris County District Clerk for filing with Cause No. 2016-10910; *D. Patrick Smitherman v. Bayview Loan Servicing LLC et.al.*; in the 269<sup>th</sup> Judicial District Court of Harris County, Texas.

Respectfully submitted,

**BARRETT DAFFIN FRAPPIER  
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/s/ Michael C. Maus

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Agreed:



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*PRO SE PLAINTIFF*